

complaint

Mr B complains that NewDay Ltd (trading as Aqua) has refused to raise a Section 75 claim on his behalf.

background

Mr B says hotel accommodation he bought as part of a holiday, using his Aqua card, was misrepresented to him on the phone. He says he booked a double room with a garden view and late check-out was to be included. Mr B says that when he got there the room was a twin, with no garden view and he had to pay extra for the late check-out, plus Wifi which he'd been assured was free.

Mr B says he wanted Aqua to raise a Section 75 claim but, instead it used Mastercard's dispute process. Despite initially returning the money to his credit card in July 2018, Mr B says Aqua then re-charged him in September 2018 causing him to exceed his credit limit and incurring charges.

Mr B wants Aqua to process the dispute as a Section 75 claim, to refund all charges as a result of exceeding his credit limit and to remove associated adverse information from his credit file. Mr B adds that Aqua was continually harassing him about paying the additional charges.

Aqua says the holiday company sent it documents that showed Mr B had booked a "*Twin Room Garden View with a request of a double room*". It added that the terms say that special requests cannot be guaranteed and it had received confirmation from the holiday company that Mr B had accepted £60 as compensation.

Aqua adds that when it was found that Mr B was liable for the transaction, it changed the claim to a Section 75 claim to see if it could further assist Mr B. However, it says it could not establish a breach of contract and rejected the claim. Aqua offered £20 for delays in responding to his complaint but said it could not refund any charges or amend Mr B's credit file.

Our investigator did not recommend the complaint should be upheld. Although she acknowledged the service provided didn't meet Mr B's expectations, she said there was nothing to suggest there had been a breach of contract. So she didn't find Aqua had made a mistake when it re-applied the charge and found the compensation Mr B had already received from both the holiday company and Aqua was fair and reasonable.

Mr B responded to say, in summary, that the holiday was misrepresented in order to secure his business and, therefore, he is covered by Section 75.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete or contradictory, as some of it is here, I must make my decision based on the balance of probabilities. That is, what I consider is most likely to have happened.

Mr B booked a seven-day holiday to Greece in June 2018. He says he was told during the booking call that:

- He'd booked a double room with a garden view;
- Late check-out was included;
- Wi-Fi was free;
- There would be a welcome basket of champagne and fruit.

Mr B says that when he arrived his room was a twin room with a less than appealing view of a field and there was no welcome basket. He says he had to pay an additional 35 Euros for the Wi-Fi and late check-out.

Mr B says he first complained to the holiday company whilst he was still away and was able to listen to his initial booking call. He says the call confirmed that the accommodation had been misrepresented and therefore he was entitled to a successful Section 75 claim.

Unfortunately, there have been delays contacting the holiday company due to the current circumstances, and it has not been able to provide a copy of the call, but I have considered all the other available evidence to decide what would be a fair and reasonable outcome to this complaint.

I have seen Aqua's customer notes in relation to this complaint and I can see Mr B called to raise the dispute on 11 July 2018. When Aqua contacted Mr B to clarify the issues, the notes say Mr B said he'd received the service he booked but not the extras for which he says he'd paid additional money. However, he added that the invoice he'd received did not break down the individual items.

In an email to Mr B on 20 August 2018, the holiday company says it had reviewed the calls and confirmed a standard room had been booked with a request for a double. It clarified that special requests cannot be guaranteed but offered £60 as compensation for the delay in responding and to maintain its relationship with Mr B. Mr B responded the next day to say he *"appreciate[d] the offer"* and to query how the refund would be paid.

I have also seen the booking confirmation and the accommodation voucher, both of which say a twin room had been booked, although it is noted that a double room and late check-out had been requested. The accommodation voucher goes on to say that late check-out is at the hotel's discretion and charges should be paid directly to the hotel.

So, although I can see Aqua raised a Section 75 claim, on the balance of evidence, I find it more likely than not that there was no breach of contract and it was right that the claim was declined. I acknowledge Mr B feels he'd paid twice for Wi-Fi and late check-out, but I'm satisfied the compensation was sufficient for the missing extras and his additional costs.

In summary, in all the circumstances of the complaint, I can't conclude that Aqua did anything wrong and I find the refunds received by Mr B were fair and reasonable.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 December 2020.

Amanda Williams
ombudsman